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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 199

UNITED STATES OF AMERICA, PETITIONER

v.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court for the Eastern District of South Carolina (R. 46–49) in denying the Government's motion for a new trial is reported in 14 F. Supp. 132. The opinion of the Circuit Court of Appeals is reported in 89 F. (2d) 572 (R. 60–64).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 7, 1937 (R. 64). The petition

for a writ of certiorari was filed July 7, 1937, and was granted October 11, 1937, limited to the first question presented by the petition (R. 66). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The first question presented by the petition for writ of certiorari, to which this Court limited its review in granting certiorari, is:

Whether the provisions for repeal contained in Section 17 of the Economy Act of March 20, 1933, were effective to rescind the right of a beneficiary of so-called "automatic insurance" to benefits which had been granted on account of the death of a soldier by Section 401 of the War Risk Insurance Act, as amended subsequent to the soldier's death.

The decision of this question involves the consideration of the following questions:

(a) Whether the beneficiary's right to "automatic insurance" benefits was founded upon contract.

(b) Whether the right, if not contractual, was nevertheless a vested property right protected from rescission by the Fifth Amendment.

(c) Whether Congress intended the provisions for repeal in Section 17 of the Economy Act to be effective as a rescission of rights to "automatic insurance" benefits if the Act was void in so far as it purported

to rescind rights under contracts of yearly renewable (war risk) term insurance.

STATUTES AND REGULATIONS INVOLVED

Section 401 of the War Risk Insurance Act as amended December 24, 1919, c. 16, 41 Stat. 371, 374–375, provides in part:

> Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before the expiration of one hundred and twenty days after October 15, 1917, or one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; and any person inducted into the service by a local draft board after the 6th day of April 1917 and before the 11th day of November 1918, who, while in such service, and before being accepted and enrolled for active military or naval service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such

monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; or if there is no widow surviving him, then to his child or children; or if there is no child surviving him, then to his mother; or if there be no mother surviving him, then to his father, if and while they survive him: *Provided, however,* That no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations: * * *

Section 17 of the Act of March 20, 1933, c. 3, 48 Stat. 8, 11, known as the Economy Act, provides in part:

All public laws granting medical or hospital treatment, domiciliary care, compensation, and *other allowances,* pension, disability allowance, or retirement pay to veterans and the dependents of veterans of * * * the World War * * * are hereby repealed, and all laws granting or *pertaining to yearly renewable term insurance* are hereby repealed, but payments in accordance with such laws shall continue to the last day of the third calendar month following the month during which this Act is enacted. The Administrator of Veterans' Affairs un-

> der the general direction of the President shall immediately cause to be reviewed all allowed claims under the above referred to laws, and where a person is found entitled under this Act, authorize payment or allowance of benefits in accordance with the provisions of this Act commencing with the first day of the fourth calendar month following the month during which this Act is enacted, and notwithstanding the provisions of section 9 of this Act, no further claim in such cases shall be required: *Provided,* That nothing contained in this section shall interfere with payments heretofore made or hereafter to be made under contracts of yearly renewable term insurance which have matured prior to the date of enactment of this Act and under which payments have been commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending. * * * [Italics ours.]

The other pertinent statutory provisions, committee report and regulations involved, together with a letter from the Administrator of Veterans' Affairs and parts of an unreported opinion of a District Court, are set forth in the Appendix.

STATEMENT

Ben B. Jackson, the respondent, an infant, brought this suit through his guardian in the District Court of the United States for the Eastern

District of South Carolina on October 14, 1935, to recover so-called "automatic insurance" benefits of $25 per month under Section 401 of the War Risk Insurance Act, as amended, by reason of the death of Jake Jackson, who had been drafted into the military service of the United States on April 27, 1918, and had died two weeks later on May 11, without having applied for war risk insurance. It was alleged in the complaint (R. 1–3) that respondent was the only child of Jake Jackson, and that there was a disagreement with the Veterans' Administration as to his claim. The Government's answer contained a general denial of all of the allegations in the complaint except those as to the military service and death of Jake Jackson, and a specific denial that respondent was his child, and set up as a separate defense that the suit was barred by the Federal statutes of limitations (R. 3–4).

At the trial before a jury it was established that the respondent's mother died in 1932 (R. 15, 18) and that in 1935 a claim for "automatic insurance" benefits was filed by the respondent's guardian on his behalf and was denied by the Veterans' Administration (R. 9–11). The rest of the evidence related to the question of respondent's legitimacy (R. 12–28).

At the close of the case the Government made a motion for a directed verdict, which was denied (R. 28–29), and excepted to certain portions of the trial court's charge to the jury (R. 36, 37). The

motion and the exceptions related to the jurisdiction of the court on limitations and "disagreement" grounds, or the legitimacy of respondent.[1] The jury rendered a verdict for respondent. (R. 38).

The question to which this Court has limited its grant of the writ of certiorari was raised by the Government's motion for a new trial, one of the grounds of which was that "automatic insurance was a gratuity" and that the respondent's "action thereon was barred by the repealing clauses of the Economy Act of 1933" (R. 45). The motion was denied in an opinion delivered by the trial judge (R. 46–49). He expressed doubt as to his power to consider the point relating to the repeal of the "automatic insurance" provisions by the Economy Act "on motion in arrest of judgment" in view of the fact that it had not been raised at the trial (R. 47), but expressed the opinion, nevertheless, that respondent's right to "automatic insurance" benefits was to be treated as though upon a policy or contract of insurance, and hence could not be rescinded by the repealing clauses in the Economy Act (R. 48–49). The Government expressly ex-

[1] The question as to the legitimacy of the respondent is not now involved in view of the fact that this Court, in granting certiorari, limited its review to the first question presented by the petition.

The questions as to the jurisdiction of the District Court on limitations and "disagreement" grounds were later abandoned as lacking merit. See petition for writ of certiorari, footnote 3, p. 9.

cepted to the ruling of the court that the suit was not barred by the repealing clauses of the Economy Act. (R. 49–50).[2] Judgment was entered for the respondent awarding installments of "automatic insurance" benefits in the sum of $25 per month from May 11, 1918, the date of Jake Jackson's death, to January 11, 1936, the due date of the installment immediately preceding the trial of the case (R. 4–6). A bill of exceptions was settled and filed in due time (R. 6–51), and an appeal on behalf of the Government was duly prayed, allowed, and perfected (R. 54–57). Error was expressly assigned by the Government to the ruling of the court that the respondent was entitled to maintain the suit despite the repealing clauses of

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[2] This question was clearly reviewable by the Circuit Court of Appeals. The motion for a new trial (R. 45) by which the point was first raised in the trial court as to the effect of the Economy Act upon rights to "automatic insurance" was considered by the court as a motion in arrest of judgment (R. 47). Furthermore, the question here could have been properly raised for the first time on appeal, since it involves the repeal of a governing statute (*Fourth National Bank* v. *Francklyn*, 120 U. S. 747, 751) and goes to the respondent's failure to state a cause of action as affirmatively shown by the allegations in his complaint. *Slacum* v. *Pomery*, 6 Cranch 221, 224; *U. S. Fidelity & Guaranty Co.* v. *Whitaker*, 8 F. (2d) 455, 457 (C. C. A. 9th); *Griggs* v. *Nadeau*, 221 Fed. 381 (C. C. A. 8th); *United Firemen's Ins. Co.* v. *Jose Rivera Soler & Co.*, 81 F. (2d) 385, 386 (C. C. A. 1st). See also *Craig* v. *Lovell*, 109 U. S. 194; *Chase* v. *United States*, 256 U. S. 1; *Watts* v. *Waddle*, 6 Pet. 389, 402; *Schooner Peggy*, 1 Cranch 103, 110; *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226; *United States* v. *Heinzman & Co.*, 206 U. S. 370.

the Economy Act. (See Assignments 1 and 6, R. 54, 55.)

In affirming the judgment below, the Circuit Court of Appeals held that the repealing clauses in Section 17 of the Economy Act were ineffective to rescind the provisions as to "automatic insurance" contained in Section 401 of the War Risk Insurance Act, as amended. It is stated in the opinion (R. 62) that although support for the Government's contention that "automatic insurance" was abrogated by the Economy Act is found in *Stephens* v. *United States*, 85 F. (2d) 570 (C. C. A. 6th), and in the unreported decision of the District Court for the District of Nebraska in *Luther H. Dill* v. *United States*, this position is untenable—

> because the intention of Congress to place automatic insurance in the same category as insurance for which application has been made seems to be clearly set out in the Act. * * *
>
> It is obvious that Congress chose to consider the induction of the soldier into the service and his disability or death within 120 days thereafter as equivalent to an application for and a grant of insurance, so that a contract of insurance of equal validity to those for which application should be made would come into existence; and since Congress accepted the military service as the basis of the contract, it is of no moment that no written document was issued to the soldier or that no premium for the brief period of 120 days was required.

Accordingly the court held, in effect, that the respondent, as beneficiary, acquired a vested property right by contract to receive the benefits provided in the statute, which was protected from impairment by the Fifth Amendment, citing *Lynch v. United States,* 292 U. S. 571.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Section 17 of the Economy Act of March 20, 1933, was not effective to rescind the infant respondent's right to "automatic insurance" benefits under Section 401, War Risk Insurance Act, as amended.

2. In holding in effect that the infant respondent's right to "automatic insurance" benefits under Section 401 of the War Risk Insurance Act, as amended, was a vested property right founded upon contract and hence protected from impairment by the Fifth Amendment;

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

I

It is submitted that the statutory grant of so-called "automatic insurance" to respondent was revocable by Congress at any time without payment of compensation under the Fifth Amendment. In holding that the grant of such benefits was not subject to repeal by Section 17 of the

Economy Act, the courts below relied upon *Lynch* v. *United States,* 292 U. S. 571. That case, however, involves policies of war risk insurance, and in holding that they were contracts creating vested rights protected by the Fifth Amendment it was pointed out by this Court that such contracts differ from pensions, compensation allowances, hospital, and other privileges granted by the War Risk Insurance Act, because the latter were mere gratuities, involving no agreement of the parties and creating no vested rights; hence, the benefits conferred by them might be redistributed or withdrawn at any time in the discretion of Congress.

The benefits which respondent seeks to recover were not founded on contract but were gratuities. They were granted as part of a legislative program, wholly benevolent in purpose, which included family and compensation allowances and provisions for granting war risk insurance. War risk insurance was granted on application in the form of a contract which required the payment of premiums as consideration for the Government's obligation. The grant of "automatic insurance," on the other hand, required no application, consideration or form embodying its terms. The rule is well settled that statutes, claimed to restrict the power of Government by the granting of private rights, are to be strictly construed against the grantees, and that nothing will be presumed to pass except it be expressed in clear and unambiguous language, the presumption being that such a law

is not intended to create private contractual or vested rights but merely to declare a policy to be pursued until the Legislature shall ordain otherwise. There is nothing in the Act here sufficient to overcome this presumption. The so-called "contract of insurance," held by the court below to have been created by the statute, was expressly based upon a presumption, admittedly contrary to fact, that the veteran had applied for and had been granted insurance. This deliberate resort to a fictitious contract would seem sufficient alone to show an absence of intention to enter into an actual contract. Moreover, there is strong additional evidence that there was no intention to bind the Government by an irrevocable obligation to pay the benefits in question, in the fact that the grant included not only persons who lacked the opportunity to obtain war risk insurance, but also those whose failure to apply for such insurance was entirely voluntary.

Furthermore, in cases like the one at bar, where the soldier had died, the beneficiary, if held to have a vested right, would be in a better position than beneficiaries of war risk insurance contracts whose rights to benefits, even after the death of the insured, are subject to redistribution by Congress as to unaccrued installments. Manifestly, no such preference was intended. Since there could thus have been no intention to contract with beneficiaries of deceased soldiers, there was plainly no intention to contract with soldiers who were alive.

It is submitted that the sole purpose of presuming an application for and grant of insurance was merely to confer benefits similar in some respects to those which would have been received if contracts of insurance had been obtained. The Government's position here is thus reconcilable with the cases in which statutory provisions giving the privilege of suing the United States on claims under a "contract of insurance", and other provisions regarded as applicable to war risk insurance, were held or assumed to be applicable to "automatic insurance."

Furthermore, sufficient consideration was wanting to support a contract if one had been intended. The court below held that military service was the consideration. But military service in time of war is insufficient consideration to support a contract, since it is merely the performance by the soldier of his legal duty as a citizen to defend his country when the necessity arises.

II

It is submitted that the statutory grant of "automatic insurance" benefits to respondent was revoked by Section 17 of the Economy Act of March 20, 1933. There would seem no doubt that Congress intended to include the grant among those repealed by Section 17 of the Economy Act of March 20, 1933. The urgent need for stringent economy was fully recognized, and the Act was designed to meet that need with a program affecting the benefits and

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privileges granted under prior Acts to all war veterans and their dependents and to certain other persons, the grant of which was regarded as gratuitous. Those granted World War veterans and certain others, with few exceptions, were sought to be rescinded, and the President was authorized within limits to set up a new and presumably more economical system of benefits. There would, therefore, seem no reason for doubting that the broad language of the statute was intended to repeal the gratuitous grant of "automatic insurance" benefits.

Furthermore, the repeal of the statutes granting "automatic insurance" was not affected by the invalidity of the Act in so far as it purported to repeal those granting yearly renewable term insurance. The repealing provisions were entirely separable in substance. Moreover, it is clear that Congress intended the repeal of the provisions for "automatic insurance" to stand regardless of the validity of the attempted repeal of those for yearly renewable term insurance. For all of the benefits and privileges sought to be affected were regarded as gratuities and hence revocable, and in view of the urgent need for economy it is reasonable to infer that Congress did not intend to allow the possible failure of its attempt to repeal yearly renewable term insurance to defeat the principal purpose of the Act in whole or in part, especially in view of the fact that the President was granted powers which would permit him to make adjust-

ments to off-set any failure of the Act with respect to the economies intended.

Furthermore, there would seem no more reason why Congress should have intended the repeal of the provisions for "automatic insurance" to be any more dependent upon the repeal of those for yearly renewable term insurance than the provisions repealing the other benefits and privileges. Previous legislation shows that "automatic insurance" has been consistently regarded with less favor than yearly renewable term insurance as indicated by the fact that there have been more restrictions in regard to beneficiaries of the former than of the latter, and less liberality as to the periods within which the respective rights to each were available. Moreover, recent extensions of the period of limitations on suits upon claims for insurance against the Government have been held to omit claims for "automatic insurance." The unequal treatment accorded by the Economy Act to other classes of persons whose rights were affected shows that Congress was intent upon carrying out its purpose of stringent economy without regard to equality of treatment. As stated in the opinion of the court below, the Government's contention here that "automatic insurance" was abrogated by the Economy Act is supported by *Stephens* v. *United States,* 85 F. (2d) 570 (C. C. A. 6th), and the unreported decision of the District Court for the District of Nebraska in *Luther H. Dill* v. *United States.*

The fact that payments have been made of claims for "automatic insurance" since the passage of the Economy Act furnishes no support for respondent's position, since it is evident that some of these payments were made under provisions which related solely to yearly renewable term insurance and the other payments were based upon a misinterpretation of this Court's decision in *Lynch* v. *United States, supra.*

III

Any privilege which may have existed to sue the United States for "automatic insurance" benefits sought by the respondent has in effect been revoked by the repeal of the provisions for such benefits in Section 17 of the Economy Act. If such privilege ever existed under the statutory provisions giving such a privilege on a claim under a "contract of insurance," it was based upon a fiction of a contract arising from the provisions granting "automatic insurance." The repeal of these provisions destroyed the fiction, which was the basis of the privilege, and hence the privilege ceased to exist. We believe that the Tucker Act would be inapplicable. In any event, it is manifest that jurisdiction was not asserted under that Act since the case was tried before a jury. Therefore, it would seem unnecessary to consider whether the suit might have been brought under that Act.

ARGUMENT

I

THE GRANT OF BENEFITS TO RESPONDENT IN SECTION 401 OF THE WAR RISK INSURANCE ACT, AS AMENDED, WAS REVOCABLE BY CONGRESS AT ANY TIME WITHOUT PAYMENT OF COMPENSATION UNDER THE FIFTH AMENDMENT

In holding that the statutory grant of benefits provided in Section 401 of the War Risk Insurance Act, as amended, known as "automatic insurance,"[1] was not subject to repeal by Section 17 of the Economy Act, the courts below relied upon the decision of this Court in *Lynch* v. *United States,* 292 U. S. 571. In that case, however, this Court was dealing with policies of war risk insurance issued under Sections 400–403 of the War Risk Insurance Act, as amended, and held that as these were contracts and therefore created vested rights, they could not, because of the Fifth Amendment, be abrogated under Section 17 of the Economy Act without payment of just compensation. In so holding the Court pointed out that policies of war risk insurance differed from pensions, compensation allowances, hospital, and other privileges granted by the War Risk Insurance Act, because

[1] These benefits were designated as "automatic insurance" by Congress. Public Resolution No. 22, 65th Congress, approved February 12, 1918, c. 17, 40 Stat. 438; Act of June 25, 1918, c. 104, sec. 20, 40 Stat. 609, 615.

the latter were mere gratuities. The Court said (p. 577):

> They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *United States* v. *Teller,* 107 U. S. 64, 68; *Frisbie* v. *United States,* 157 U. S. 160, 166; *United States* v. *Cook,* 257 U. S. 523, 527.

See also *Walton* v. *Cotton,* 19 How. 355, 357–358; *Pennie* v. *Reis,* 132 U. S. 464; *United States* v. *Hall,* 98 U. S. 343, 358; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 122–124; *Dodge* v. *Board of Education of Chicago,* No. 5, October Term, 1937, decided November 8, 1937.

We submit that the benefits which respondent seeks to recover were not founded upon contract, but were gratuities, and therefore subject to revocation by Congress at any time, without payment of compensation under the Fifth Amendment.

The provisions in question were part of a legislative program wholly benevolent in purpose which was enacted into law by the War Risk Insurance Act of October 6, 1917. *Lynch* v. *United States, supra,* p. 576. Article I of the Act contained provisions for administration, appropriations of money, definitions of terms, and certain penalties; Article II provided for compulsory allotments by soldiers for the support of their families and for supplementing such allotments by allowances from

the Government; Article III provided for the payment of "compensation" for death or disability; Article IV provided for the granting of war risk insurance and for the payment of the benefits in question here.

War risk insurance was granted upon application in the form of a contract which required as a consideration for the Government's obligation that the insured pay prescribed monthly premiums. See Treasury Bulletin No. 1, *infra*, p. 65.

The grant of "automatic insurance," on the other hand, contained no provisions for application, consideration, or form embodying its terms. Section 401 of the War Risk Insurance Act, as amended (*supra*, p. 3), containing it, provided that any person in service who "becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance," within certain limited periods of time "shall be deemed to have applied for and to have been granted insurance" payable in monthly installments of $25 each "to such person during his life," and, in the event of his death, to certain surviving relatives in the order named in the statute, but not to exceed 240 installments, including any paid to the veteran.[4]

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[4] Jake Jackson was dead when the provisions applicable to him were enacted. At the time of his death, May 11, 1918, Section 401 of the War Risk Insurance Act covered only persons who had died or become totally permanently disabled while in active service between April 6, 1917, and 120 days after publication of the insurance contract (Act of

The rule is well settled that statutes claimed to restrict the power of government by the granting of private rights are to be strictly construed against the grantees, and that nothing will be presumed to pass except it be expressed in clear and unambiguous language. *Pearsall* v. *Great Northern Railway,* 161 U. S. 646, 664; *Reichelderfer* v. *Quinn,* 287 U. S. 315, 321. In *Dodge* v. *Board of Education of Chicago, supra,* it is said:

> The presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. He who asserts the creation of a contract with the state in such a case has the burden of overcoming the presumption.

See also *Rector &c. of Christ Church* v. *County of Philadelphia,* 24 How. 300, 302; *Tucker* v. *Ferguson,* 22 Wall. 527, 575; *New Jersey* v. *Yard,* 95 U. S. 104; *Newton* v. *Commissioners,* 100 U. S. 548, 561; *Wisconsin & Michigan Ry. Co.* v. *Powers,* 191 U. S. 379, 387.

October 6, 1917, *infra*, p. 62), which occurred October 15, 1917, by the promulgation of Bulletin No. 1 of the Treasury Department (*infra*, p. 65). Since Jake Jackson died on May 11, 1918, more than 120 days after such publication, no right to benefits on account of his death arose until Section 401 was amended by the Act of December 24, 1919 (*supra*, p. 3), to cover those who between April 6, 1917, and November 11, 1918, became totally and permanently disabled or died while in active service, and prior to 120 days after entry into such service, or became so disabled or died after being drafted and before being accepted for active service.

There is nothing in the Act here which is sufficient to overcome the presumption that the provisions for monthly payments of the benefits in question was merely a declaration of a policy to be pursued until Congress should decide otherwise and did not create an obligation by contract to continue such payments. There is no language expressing an intention to enter into a contract nor may such an intent be implied.

The court below held that Congress considered the induction of a soldier into the service and his disability or death thereafter, as equivalent to an application for and a grant of insurance, and accepted his military service as the basis for the contract, "so that a contract of insurance of equal validity to those for which application should be made would come into existence (R. 62); * * *." This so-called "contract of insurance," however, was expressly based upon a presumption, admittedly contrary to fact, that the soldier had applied for and had been granted insurance, and hence was only a fiction and obviously was intended to be nothing more. The fact that Congress thus deliberately resorted to a fictitious contract in granting the benefits in question would seem sufficient alone to show that there was no intention to enter into an actual contract. Moreover, the fact that the grant included not only persons who lacked the opportunity to obtain war risk insurance, but also those whose failure to apply for such insurance was entirely

voluntary, constitutes additional and most persuasive evidence that there was no intention of binding the Government by an irrevocable obligation to pay the monthly installments of the benefits in question. Furthermore, in cases like the one at bar, where the soldier had died and a contract, if made, would necessarily have been with the beneficiary, such a contract, if giving the beneficiary vested rights to the benefits in question, would place him in a better position than beneficiaries of war risk insurance contracts who have no vested right even after the death of the insured as against a redistribution by Congress of unaccrued benefit installments payable under the policy. *White* v. *United States*, 270 U. S. 175. Manifestly Congress had no intention of making such a preference. Since, therefore, there could have been no intention to enter into contracts as to the benefit in question with the beneficiaries of deceased soldiers, there was plainly no intention to contract with disabled soldiers who were alive when the Act was passed.

It is submitted that the sole purpose of presuming the application for and grant of insurance was not to create rights by contract but merely to confer benefits similar in some respects to those which would have been received if contracts of insurance had been obtained. The Government's position here is thus reconcilable with the decisions cited by the court below (R. 63) and by respondent in his brief in opposition (p. 5), which hold or assume that suit might be brought for "automatic insur-

ance" benefits under the statutory provisions giving a right of action upon a claim under a "contract of insurance," and two of which (*United States* v. *Carlson,* 44 F. (2d) 5 (C. C. A. 9th) and *Caprio* v. *United States,* 45 F. (2d) 520 (C. C. A. 1st)) hold that a statutory presumption regarded by the court as part of the war risk term insurance contract was intended also to be applicable to "automatic insurance."

Furthermore, sufficient consideration was wanting to support a contract if one had been intended. The court below held, in effect, that Congress accepted military service as the consideration. (R. 62.) But it is submitted that military service in war time is insufficient consideration to support a grant of benefits to soldiers as a contract. In performing such service the soldier is only doing his duty as a citizen. In *Selective Draft Law Cases,* 245 U. S. 366, 378, it is said:

> It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it. Vattel, Law of Nations, Book III, c. 1 & 2.

And in *United States* v. *Schwimmer,* 279 U. S. 644, 650, it is said:

> That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises is a fundamental principle of the Constitution.

In the *Restatement of the Law of Contracts* of the American Law Institute, Section 76, it is said in effect that an act "required by a legal duty that is neither doubtful nor the subject of honest and reasonable dispute if the duty is owed either to the promissor or to the public" is not sufficient consideration for a unilateral contract. Accord: *Williston, Contracts,* Vol. I, Sec. 132 (1936 ed.).

United States v. *Weaver,* 86 F. (2d) 372 (C. C. A. 4th), cited in the opinion of the court below, is distinguishable. In that case, which involved yearly renewable term insurance and not "automatic insurance," the court below held that Congress lacked the power to withdraw by the Economy Act of March 20, 1933 (*infra,* p. 70), the privilege of applying unpaid compensation allowances to the revival of a policy of insurance lapsed for nonpayment of the premiums, granted by Section 305 of the World War Veterans' Act, 1924, as amended (U. S. C., Title 38, Section 516). The decisive point in that case, however, was that Section 305 had already been incorporated prospectively by reference in the war risk insurance contract itself under the provisions of Bulletin No. 1, Treasury Department (*infra,* p. 65), and hence that the rights provided in that section were plainly based on a contract.

II

THE STATUTORY GRANT OF "AUTOMATIC INSURANCE" BENEFITS TO RESPONDENT WAS REVOKED BY SECTION 17 OF THE ECONOMY ACT OF MARCH 20, 1933

There would seem no doubt that Congress intended to include the statutory grant of "automatic insurance" benefits among those repealed by Section 17 of the Economy Act of March 20, 1933 (*supra*, p. 4). This section provided, in part, that all "public laws granting medical or hospital treatment, domiciliary care, compensation and other allowances, pension, disability allowance, or retirement pay to veterans and the dependents of veterans of * * * [certain wars, including] the World War, * * * are hereby repealed, and all laws granting or pertaining to yearly renewable term insurance are hereby repealed, * * *." Congress was fully cognizant of the urgent need for stringent economy (see Committee Report, *infra*, p. 77, and *Lynch* v. *United States*, 292, U. S. 571, 580) and the Act was designed to meet that need with a program affecting the benefits and privileges granted gratuitously under prior Acts to all war veterans and their dependents, and other former members of the military and naval services.

As to the veterans and their dependents of certain wars, including the World War, and certain other former members of the military and naval

services, this purpose was sought to be accomplished by repealing under Section 17 (with saving clauses not deemed applicable here) all laws gratuitously granting to them various benefits and privileges, and by authorizing the President, within certain limits, to set up a new and presumably more economical system of benefits (Sections 1–4, 6, *infra*, pp. 70–73). Rights under "converted" insurance policies[8] were not affected. Laws granting yearly renewable term insurance were, however, included among the laws repealed by Section 17 apparently upon the assumption (subsequently held to be erroneous in *Lynch* v. *United States, supra*) that there was no difference between the legal status of rights under the outstanding contracts of such insurance and rights to pensions, compensation allowances, and other gratuities (*Lynch* v. *United States, supra*, pp. 585, 586–587), which were subject to be withdrawn at any time in the discretion of Congress.

In view of the recognition by Congress of the great need of economy and the comprehensive scope of the repealing provisions in a statute obviously designed to repeal not only laws under which term insurance was issued, but all laws granting gratuities, there would seem to be no reason for doubting that Congress intended to repeal

[8] The term "converted" has been used to describe all forms of insurance issued by the Government subsequent to the original contracts of yearly renewable term insurance. See *United States* v. *Madigan*, 300 U. S. 500, 503.

the provisions relating to "automatic insurance." If the manifested intention of Congress to repeal all grautities requires specific language to effectuate that intention as to "automatic insurance," it may be found either in the phrase "other allowances" (*Luther H. Dill* v. *United States* (D. C. Nebr.) *supra,* unreported)* or since "automatic insurance" was granted in lieu of yearly renewable term insurance, in the phrase "laws * * * *pertaining to* yearly renewable term insurance."

Furthermore, the repeal of the provisions for "automatic insurance" was not affected by the fact that Section 17 was invalid in so far as it purported to repeal laws granting yearly renewable term insurance, as was held in *Lynch* v. *United States, supra.* The rule is well established by decisions of this Court that a statute invalid in part is not necessarily void in its entirety; that the test to be applied is whether the part within the power of the legislature to enact is separable from that which is not, and whether the legislature intended the former to stand, if the latter should fall. (*Allen* v. *Louisiana,* 103 U. S. 80, 83–84; *Field* v. *Clark,* 143 U. S. 649, 696; *Reagan* v. *Farmers Loan & Trust Co.,* 154 U. S. 362, 395–396; *Loeb* v. *Columbia Township Trustees,* 179 U. S. 472, 490; *Berea College* v. *Kentucky,* 211 U. S. 45, 54–56; *Champlin Rfg. Co.* v. *Commission,* 286 U. S. 210, 234; *Lynch*

* The pertinent parts of the opinion in this case appear in the Appendix, *infra,* pp. 78–80.

v. *United States, supra,* p. 586). Moreover, the test as to separability is not whether the parts under consideration are contained in the same section, as in the instant case, "but whether they are essentially and inseparably connected in substance * * * so interdependent that one cannot operate without the other." *Loeb* v. *Columbia Township Trustees, supra,* p. 590; *Berea College* v. *Kentucky, supra,* pp. 55–56. It is submitted that neither the repeal of the provisions for "automatic insurance" nor the repeal of any of the provisions for the other gratuities in Section 17, have any essential or inseparable connection in substance with the repeal of the provisions for yearly renewable term insurance. While it is true that "automatic insurance" was granted in lieu of yearly renewable term insurance, this could hardly be considered a connection so inseparable that repeal of the provisions as to "automatic insurance" benefits could not be operative without the repeal of those as to yearly renewable term insurance.

Moreover, it would seem equally clear that Congress intended the repeal of the provisions for "automatic insurance" to stand irrespective of whether the attempted repeal of those for yearly renewable term insurance was valid.

As previously stated, all of the rights and privileges affected by the repealing provisions in Section 17 were regarded as gratuities, and hence as revocable. Moreover, the need of stringent economy

was urgent. Under the circumstances it is reasonable to infer that Congress would prefer to realize a part of the projected economies, rather than having them fail completely, and did not intend to allow the possible failure of the repealing provisions as to rights under contracts of yearly renewable term insurance to operate to prevent the accomplishment of the principal purpose of the Act in whole or in part. And this is especially true in view of the fact that Sections 1–4 and 6 (*infra*, pp. 70–73) granted the President the power, within certain limits, to prescribe the rates of pensions, the nature and periods of service, and the degrees of disability for which they should be paid, and the extent of the domiciliary care to be provided, which would permit him to make adjustments directed to offsetting any failure of the Act with respect to the economies intended.

Furthermore, there would seem to be no more reason why Congress should have intended the repeal of the provisions as to "automatic insurance" to be any more dependent upon the repeal of the provisions as to yearly renewable term insurance than the provisions repealing compensation, domiciliary care, and other benefits. An examination of certain previous Acts shows clearly that Congress from the beginning has regarded "automatic insurance" with less favor than yearly renewable term insurance, possibly because of the fact that premiums were required for the latter but not for

the former. Moreover, the fact that "automatic insurance" was granted to persons who had voluntarily refused to apply for term insurance may have also been a factor. In any event, distinctions have consistently been made between the two types of benefits, both as to classes and designation of beneficiaries and the periods within which they were available. From the beginning Section 402 has provided for a more numerous class of beneficiaries of term insurance than was provided in Section 401 for "automatic insurance." Moreover, the insured, under the former, was given the right to designate the beneficiary or beneficiaries within a permitted class and to change such designation at will. The beneficiaries of "automatic insurance" on the other hand were designated by the statute.[1]

As to the distinctions made with regard to the periods within which term insurance and "automatic insurance" were available, the original Act

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[1] The beneficiaries provided in Section 402 of the original Act (*infra*, p. 62) for term insurance, were "a spouse, child, grandchild, parent, brother, or sister." Those designated in Section 401 (*infra*, pp. 61–62) were a widow during widowhood, child or widowed mother only. The Act of June 25, 1918, c. 104, Section 19 (*infra*, p. 67), eliminated widowhood of mothers as a condition to their eligibility for "automatic insurance" benefits and added fathers to the class of those entitled in the order named in the Act. No other changes were made then or later in this respect. In the case of war risk term insurance, however, uncles, aunts, nephews, nieces and brothers and sisters-in-law were subsequently added to the permitted class of beneficiaries by the Act of December 24, 1919, c. 16, Section 13, 41 Stat. 371, 375 (*infra*, p. 69).

(Act of October 6, 1917, *infra*, pp. 61–62) limited "automatic insurance" to persons who died or became totally and permanently disabled before the expiration of 120 days from the publication of the terms and conditions of the insurance contract, i. e., October 15, 1917, when such publication was made in the form of Treasury Bulletin No. 1 (*infra*, p. 65). The same Act permitted applications for term insurance within 120 days after such publication or after entrance into active service. This distinction between the periods for "automatic insurance" and application for term insurance was eliminated by the Act of December 24, 1919 (*infra*, p. 67), but Public Resolution No. 22, 65th Congress, approved February 12, 1918 (*infra*, p. 66) extending to April 12, 1918, the time within which an application for term insurance might be made, specifically excluded "automatic insurance" from the extension thus provided, and no further extension was ever granted as to the latter.

Another instance of the fact that Congress regarded "automatic insurance" with less favor than contracts of yearly renewable term insurance appears in the Act of July 3, 1930, c. 849, Sec. 4, 46 Stat. 991, 992 (*infra*, p. 70), which extended the period of limitations on suits under contracts of war risk term and "converted" insurance, but not for the suits to recover "automatic insurance" benefits. See *United States* v. *Preece*, 85 F. (2d) 952 (C. C. A. 10th), certiorari denied, 300 U. S.

660; petition for rehearing denied, 300 U. S. 687; *United States* v. *Pastell*, 91 F. (2d) 575 (C. C. A. 4th). In the opinion of the Circuit Court of Appeals for the Fourth Circuit in the *Pastell* case, the difference in the treatment accorded by Congress to yearly renewable term insurance and "automatic insurance" is demonstrated by an exhaustive review of the applicable statutes.

Furthermore, there is no reason for assuming that Congress intended to avoid any inequality of treatment as between beneficiaries of "automatic insurance" and those of term insurance which might have been deemed to result if the repeal should stand as to "automatic insurance" though void as to term insurance, for the unequal treatment accorded by the Economy Act to other classes of persons whose rights were affected shows that Congress was intent upon carrying out its purpose of stringent economy without regard to equality of treatment. This is apparent from the inequality of treatment which is evidently accorded widows and children of veterans of the World War and those of veterans of other wars.[8]

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[8] Section 1 of the Act containing the provisions for pensions in lieu of the rights and privileges rescinded by the repealing clauses in Section 17, provided that a pension might be paid to any person disabled as a result of disease or injury incurred or aggravated in line of duty during active service, whether or not in time of war (subsection (a)), and to any of the veterans covered by the Act who were permanently disabled *irrespective of whether the disability was connected with his service* (sub-section (b)). Moreover, the widow or child of any of such veterans, *ex-*

In view of the fact that thus apparently no provision was made to avoid unequal treatment as between a class of beneficiaries which included those of term insurance as well as those of "automatic insurance," on the one hand, and other classes of persons affected, there would seem to be no reason for assuming that Congress intended to avoid inequality of treatment as between beneficiaries of "automatic insurance" and those of term insurance.

As stated in the opinion of the court below (R. 62), the Government's contention here that "automatic insurance" was abrogated by the Economy Act is supported by *Stephens* v. *United States,* 85 F. (2d) 570 (C. C. A. 6th) and the unreported decision of the District Court for the District of Nebraska in *Luther H. Dill* v. *United States.*[9] It was held in the *Stephens* case, as one of the grounds

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cept veterans of the World War, was also eligible to receive a pension, *irrespective of whether the veteran's death was connected with his service* (sub-section (d)). A widow or child of a World War veteran, however, was eligible for a pension only under sub-section (c), which was limited to cases where death resulted from disease or injury incurred or aggravated in line of duty during active service. Consequently one of the effects intended by the Act, by virtue of the provisions of Sections 1 and 17, was not only to render a widow or child of a World War veteran, whose death was not connected with his service, ineligible to receive a pension but also to deprive such widow or child of any rights he or she might have either to "automatic insurance" or yearly renewable term insurance benefits except such as were preserved by the saving clause in Section 17.

[9] The pertinent parts of the opinion in this case appear, (*infra*, p. 78).

for denying the plaintiff's recovery of "automatic insurance" benefits, that the statute granting them was repealed by Section 17 of the Economy Act. The decision in the *Dill* case is to the same effect.

The fact, to which respondent refers in his brief in opposition (p. 6), that payments have been made of claims for "automatic insurance" since the passage of the Economy Act furnishes no support for his position. It is evident from the letter of the Administrator of Veterans' Affairs to the Solicitor General (*infra,* p. 80) that the payments made prior to the decision of this Court in *Lynch* v. *United States, supra,* and those made subsequent to the decision of the Circuit Court of Appeals for the Sixth Circuit in *Stephens* v. *United States, supra,* were based upon the saving clause in Section 17 of the Economy Act and subsequent Acts restoring certain insurance benefits which Congress had sought to rescind under the repealing clauses of Section 17.[10] But these statutory provisions, in so far as they purported to affect "insur-

[10] Section 17 contained a clause saving rights to benefits "under contracts of yearly renewable term insurance," payment of which had been commenced or which had been awarded by judgments already rendered, or to be rendered in pending suits, *supra*, p. 5.

Act of June 16, 1933, c. 101, § 20, 48 Stat. 309, provides:

"* * * Notwithstanding the provisions of section 17, title 1, Public Numbered 2, Seventy-third Congress, any claim for yearly renewable term insurance on which premiums were paid to the date of death of the insured and any claim for pension, compensation allowance, or emergency officers' retirement pay under the provisions of laws repealed

ance," related to yearly renewable term insurance only, in plain and unambiguous terms, the meaning of which may not be altered by administrative practice inconsistent with it. (*Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, 640; *Miller* v. *United States,* 294 U. S. 435, 439–440, rehearing denied, 294 U. S. 734. And compare, *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 315; *Alaska Steamship Co.* v. *United States,* 290 U. S. 256, 264.) Moreover, payments made be-

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by said section 17 wherein claim was duly filed prior to March 20, 1933, may be adjudicated by the Veterans' Administration on the proofs and evidence received by the Veterans' Administration prior to March 20, 1933, and any person found entitled to the benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws: * * *."

Section 35 of the Independent Offices Appropriation Act of 1935, passed on March 27–28, 1934, over the President's veto, c. 102, 48 Stat. 526, provides:

"That notwithstanding the provisions of Section 17 of title 1, of an Act entitled 'An Act to maintain the Credit of the United States Government' approved March 20, 1933, and section 20 of an Act entitled 'An Act making appropriations for the Executive Offices, etc. * * *' approved June 16, 1933, any claim for yearly renewable term insurance under the provisions of laws repealed by said section 17, wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws."

tween the decisions in the *Lynch* and *Stephens* cases were evidently based upon a misinterpretation of the meaning of the *Lynch* case. Furthermore, the practice is of comparatively short duration and hence, it is submitted, should not be seriously considered in any event. Compare *Merritt* v. *Cameron*, 137 U. S. 542, 552.

III

ANY PRIVILEGE WHICH MAY HAVE EXISTED TO SUE THE UNITED STATES FOR "AUTOMATIC INSURANCE" BENEFITS SOUGHT BY THE RESPONDENT HAS IN EFFECT BEEN REVOKED BY THE REPEAL OF THE PROVISIONS FOR SUCH BENEFITS IN SECTION 17 OF THE ECONOMY ACT

Section 401 of the War Risk Insurance Act, as amended October 6, 1917 (*infra*, pp. 61–64), in granting "automatic insurance" benefits, provided that under the conditions specified therein a person in service should "be deemed to have applied for and to have been granted insurance." As previously stated, this is nothing more than a fiction of a contract, and if the privilege of suing the United States for "automatic insurance" benefits ever existed under the statutory provisions[11] giving such a privilege upon a claim under a "contract of insurance," as was held or assumed by the decisions cited by the court below (R. 63) and in respond-

[11] Section 19, World War Veterans' Act, 1924, as amended (38 U. S. C. 445) and its predecessor, Section 405, War Risk Insurance Act, October 6, 1917, *infra*, p. 64.

ent's brief in opposition (p. 5), it was based upon that fiction. It is submitted that the repeal of the provisions for the benefits in question by Section 17 of the Economy Act destroyed the fiction, which was the basis of the privilege, and hence the privilege ceased to exist.[12]

While we believe that the Tucker Act (U. S. C., Title 28, Section 41 (20) would be inapplicable, it is manifest that jurisdiction was not asserted under that Act since the case was tried before a jury. Therefore it is deemed unnecessary to consider whether the suit might have been instituted under that Act.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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DECEMBER 1937.

[12] Although this point was not specifically made in the petition for a writ of certiorari or specifically made in the court below, it is implicit in the Government's contention that the "automatic insurance" provisions have been repealed. Moreover, the point is jurisdictional and therefore may be asserted at any time.

APPENDIX

The Act of October 6, 1917, c. 105, 40 Stat. 398–410 (amending the War Risk Insurance Act), provides in part as follows:

ARTICLE I

SECTION 1. That there is established in the Treasury Department a Bureau to be known as the Bureau of War Risk Insurance, the director of which shall receive a salary at the rate of $5,000 per annum.

That there be in such bureau a Division of Marine and Seamen's Insurance and a Division of Military and Naval Insurance in charge of a commissioner of Marine and Seamen's Insurance and a commissioner of Military and Naval Insurance, respectively, each of whom shall receive a salary of $4,000 per annum.

SEC. 2. That such Act of September second, nineteen hundred and fourteen, as amended, is hereby amended by adding new sections, as follows:

SEC. 12. That sections two to seven, inclusive, and section nine, shall be construed to refer only to the Division of Marine and Seamen's Insurance.

SEC. 13. That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, necessary

or appropriate to carry out its purposes, and shall decide all questions arising under the Act, except as otherwise provided in sections five and four hundred and five. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director, subject to the general direction of the Secretary of the Treasury. The director shall adopt reasonable and proper rules to govern the procedure of the divisions, to regulate the matter of the compensation, if any, but in no case to exceed ten per centum, to be paid to claim agents and attorneys for services in connection with any of the matters provided for in articles two, three, and four, and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of allowance, allotment, compensation, or insurance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the method of making investigations and medical examinations, and the manner and form of adjudications and awards.

SEC. 14. That the bureau and its divisions shall have such deputies, assistants, actuaries, clerks, and other employees as may be from time to time provided by Congress. The bureau shall, by arrangement with the Secretary of War and the Secretary of the Navy, respectively, make use of the services of surgeons in the Army and Navy. The Secretary of the Treasury is authorized to establish an advisory board consisting of three members skilled in the practice of insurance against death or disability for the

purpose of assisting the Division of Military and Naval Insurance in fixing premium rates and in the adjustment of claims for losses under the contracts of insurance provided for in article four and in adjusting claims for compensation under article three; compensation for the persons so appointed to be determined by the Secretary of the Treasury, but not to exceed $20 a day each while actually employed.

SEC. 15. That for the purposes of this Act, the director, commissioners, and deputy commissioners shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths and to examine witnesses upon any matter within the jurisdiction of the bureau. The director may obtain such information and such reports from officials and employees of the departments of the Government of the United States and of the States as may be agreed upon by the heads of the respective departments. In case of disobedience to a subpoena, the bureau may invoke the aid of any district court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court, within the jurisdiction of which the inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or other person, issue an order requiring such corporation or other person to appear before the bureau, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a con-

tempt thereof. Any person so required to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States.

SEC. 16. That the director shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the bureau.

SEC. 17. That for the purpose of carrying out the provisions of this Act there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $100,000 for the payment of all expenses incident to the work authorized under this Act, including salaries of the director and commissioners and of such deputies, assistants, accountants, experts, clerks, and other employees in the District of Columbia or elsewhere, as the Secretary of the Treasury may deem necessary, traveling expenses, rent and equipment of offices, typewriters and exchange of same, purchase of law books and books of reference, printing and binding to be done at the Government Printing Office, and all other necessary expenses. With the exception of the director, the commissioners, and such special experts as the Secretary of the Treasury may from time to time find necessary for the conduct of the work of the bureau, all employees of the bureau shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law. Such fees, allowances, and salaries shall be the same as are paid for similar services in other departments of the Government.

SEC. 18. That there is hereby appropriated from any money in the Treasury not otherwise appropriated, the sum of $141,-

000,000, to be known as the military and naval family allowance appropriation, for the payment of the family allowances provided by Article II. Payments out of this appropriation shall be made upon and in accordance with awards by the Commissioner of the Division of Military and Naval Insurance.

SEC. 19. That there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $12,150,000, to be known as the military and naval compensation appropriation, for the payment of the compensation, funeral expenses, services, and supplies provided by Article III. Payments out of this appropriation shall be made upon and in accordance with awards by the director.

SEC. 20. That there is hereby appropriated, from any money in the Treasury not otherwise appropriated, the sum of $23,000,000, to be known as the military and naval insurance appropriation. All premiums that may be collected for the insurance provided by the provisions of Article IV shall be deposited and covered into the Treasury to the credit of this appropriation.

Such sum, including all premium payments, is hereby made available for the payment of the liabilities of the United States incurred under contracts of insurance made under the provisions of Article IV. Payments from this appropriation shall be made upon and in accordance with awards by the director.

SEC. 21. That there shall be set aside as a separate fund in the Treasury, to be known as the military and naval pay deposit fund, all sums held out of pay as provided by section two hundred and three of this Act. Such fund, including all additions, is hereby

made available for the payment of the sums so held and deposited, with interest, as provided in section two hundred and three, and the amount necessary to pay interest is hereby appropriated.

SEC. 22. That for the purpose of this amendatory Act the marriage of the claimant to the person on account of whom the claim is made shall be shown—

(1) By a duly verified copy of a public or church record; or

(2) By the affidavit of the clergyman or magistrate who officiated; or

(3) By the testimony of two or more eyewitnesses to the ceremony; or

(4) By a duly verified copy of the church record of baptism of the children; or

(5) By the testimony of two or more witnesses who know that the parties lived together as husband and wife, and were recognized as such, and who shall state how long, within their knowledge, such relation continued: *Provided,* That marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in compensation or insurance cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to compensation or insurance accrued; and the open and notorious illicit cohabitation of a widow who is a claimant shall operate to terminate her right to compensation or insurance from the commencement of such cohabitation: *Provided further,* That for the purpose of the administration of Article II of this Act marriage shall be conclusively presumed, in the absence of proof, that there is a legal spouse living, if the man and woman have lived together in the openly acknowledged relation

of husband and wife during the two years immediately preceding the date of the declaration of war, or the date of enlistment or of entrance into or employment in active service in the military or naval forces of the United States if subsequent to such declaration.

In Articles II, III, and IV of this Act unless the context otherwise requires—

(1) The term "child" includes—

(a) A legitimate child.

(b) A child legally adopted more than six months before the enactment of this amendatory Act or before enlistment or entrance into or employment in active service in the military or naval forces of the United States, whichever of these dates is the later.

(c) A stepchild, if a member of the man's household.

(d) An illegitimate child, but, as to the father, only, if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December thirty-first, nineteen hundred and seventeen, shall have been born in the United States, or in its insular possessions.

(2) The term "grandchild" means a child as above defined of a child as above defined.

(3) Except as used in section four hundred and one and in section four hundred and two the terms "child" and "grandchild", are limited to unmarried persons either (a) under eighteen years of age, or (b) of any age, if insane, idiotic, or otherwise permanently helpless.

(4) The term "parent" includes a father, mother, grandfather, grandmother, step-

father, and stepmother, either of the person in the service or of the spouse.

(5) The terms "brother" and "sister" include brothers and sisters of the half blood as well as those of the whole blood, stepbrothers and stepsisters, and brothers and sisters through adoption.

(6) The term "commissioned officer" includes a warrant officer, but includes only an officer in active service in the military or naval forces of the United States.

(7) The terms "man" and "enlisted man" mean a person, whether male or female, and whether enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, and include noncommissioned and petty officers, and members of training camps authorized by law.

(8) The term "enlistment" includes voluntary enlistment, draft, and enrollment in active service in the military or naval forces of the United States.

(9) The term "commissioner" means the Commissioner of Military and Naval Insurance.

(10) The term "injury" includes disease.

(11) The term "pay" means the pay for service in the United States according to grade and length of service, excluding all allowances.

(12) The term "military or naval forces" means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy.

SEC. 23. That when, by the terms of this amendatory Act, any payment is to be made to a minor, other than a person in the mili-

tary or naval forces of the United States, or to a person mentally incompetent, such payment shall be made to the person who is constituted guardian or curator by the laws of the State or residence of claimant, or is otherwise legally vested with responsibility or care of the claimant.

SEC. 24. That the Bureau of War Risk Insurance, so far as practicable, shall upon request furnish information to and act for persons in the military or naval service, with respect to any contracts of insurance whether with the Government or otherwise, as may be prescribed by regulations. Said bureau may upon request procure from and keep a record of the amount and kind of insurance held by every commissioned and appointed officer and of every enlisted man in the military or naval service of the United States, including the name and principal place of business of the company, society, or organization in which such insurance is held, the date of the policy, amount of premium, name and relationship of the beneficiary and such other data as may be deemed of service in protecting the interests of the insured and beneficiaries.

SEC. 25. That whoever in any claim for family allowance, compensation, or insurance, or in any document required by this Act or by regulation made under this Act, makes any statement of a material fact knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

SEC. 26. That if any person entitled to payment of family allowance or compensation under this Act, whose right to such payment under this Act ceases upon the hap-

pening of any contingency, thereafter fraudulently accepts any such payment, he shall be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or both.

ARTICLE II. ALLOTMENTS AND FAMILY ALLOWANCES

SEC. 200. That the provisions of this article shall apply to all enlisted men in the military or naval forces of the United States.

SEC. 201. That allotment of pay shall, subject to the conditions, limitations, and exceptions hereinafter specified, be compulsory as to wife, a former wife divorced who has not remarried and to whom alimony has been decreed, and a child, and voluntary as to any other person; but on the written consent of the wife or former wife divorced, supported by evidence satisfactory to the bureau of her ability to support herself and the children in her custody, the allotment for her and for such children may be waived; and on the enlisted man's application or otherwise for good cause shown, exemption from the allotment may be granted upon such conditions as may be prescribed by regulations.

The monthly compulsory allotment shall be in an amount equal to the family allowance hereinafter specified except that it shall not be more than one-half the pay, or less than $15; but for a wife living separate and apart under court order or written agreement or for a former wife divorced, it shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not

exceed the amount fixed in the order or decree.

If there be an allotment for a wife or child, a former wife divorced and who has not remarried shall be entitled to a compulsory allotment only out of the difference, if any, between the allotment for the wife or child or both and one-half of the pay.

SEC. 202. That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

SEC. 203. That in case one-half of an enlisted man's monthly pay is not allotted, regulations to be made by the Secretary of War and the Secretary of the Navy, respectively, may require, under such circumstances and conditions as may be prescribed in such regulations, that any proportion of such one-half pay as is not allotted shall be deposited to his credit, to be held during such period of his service as may be prescribed. Such deposits shall bear interest at the rate of four per centum per annum, with semiannual rests and, when payable, shall be paid principal and interest to the enlisted man, if living, otherwise to any beneficiary or beneficiaries he may have designated, or if there be no such beneficiary, then to the person or persons who would under the laws of the State of his residence be entitled to his personal property in case of intestacy.

SEC. 204. That a family allowance of not exceeding $50 per month shall be granted and paid by the United States upon written application to the bureau by such enlisted man or by or on behalf of any prospective beneficiary, in accordance with and subject to the conditions, limitations, and exceptions hereinafter specified.

The family allowance shall be paid from the time of enlistment to death in or one month after discharge from the service, but not for more than one month after the termination of the present war emergency. No family allowance shall be made for any period preceding November first, nineteen hundred and seventeen. The payment shall be subject to such regulations as may be prescribed relative to cases of desertion and imprisonment and of missing men.

Subject to the conditions, limitations, and exceptions hereinabove and hereinafter specified, the family allowance payable per month shall be as follows:

Class A. In the case of a man, to his wife (including a former wife divorced) and to his child or children:

(a) If there be a wife but no child, $15.

(b) If there be a wife and one child, $25.

(c) If there be a wife and two children, $32.50, with $5 per month additional for each additional child.

(d) If there be no wife, but one child, $5.

(e) If there be no wife, but two children, $12.50.

(f) If there be no wife, but three children, $20.

(g) If there be no wife, but four children, $30, with $5 per month additional for each additional child.

Class B. In the case of a man or woman, to a grandchild, a parent, brother, or sister:

(a) If there be one parent, $10.

(b) If there be two parents, $20.

(c) For each grandchild, brother, sister, and additional parent, $5.

In the case of a woman, to a child or children:

(d) If there be one child, $5.

(e) If there be two children, $12.50.

(f) If there be three children, $20.

(g) If there be four children, $30, with $5 per month additional for each additional child.

SEC. 205. That family allowances for members of Class A shall be paid only if and while a compulsory allotment is made to a member or members of such class. The monthly family allowance to a former wife divorced shall be payable only out of the difference, if any, between the monthly family allowance to the other members of Class A and the sum of $50, and only then if alimony shall have been decreed to her. For a wife living separate and apart under court order or written agreement or to a former wife divorced the monthly allowance, together with the allotment, if any, shall not exceed the amount specified in the court order, decree, or written agreement to be paid to her. For an illegitimate child, to whose support the father has been judicially ordered or decreed to contribute, it shall not exceed the amount fixed in the order or decree.

SEC. 206. That family allowances to members of Class B shall be granted only if and while the member is dependent in whole or in part on the enlisted man, and then only if and while the enlisted man makes a monthly allotment of his pay for such member or members equal to the amount of the

monthly family allowance as hereinabove specified, except that—

(a) The maximum monthly allotment so required to be made to members of Class B shall be one-half of his pay.

(b) If he is making no allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be $15 per month.

(c) If he is making the compulsory allotment to a member of Class A, the minimum monthly allotment so designated to be made to members of Class B shall be one-seventh of his pay, but not less than $5 per month.

On the enlisted man's application, or otherwise for good cause shown, exemption from this additional allotment under Class B as a condition to the allowance may be granted, upon such conditions as may be prescribed by regulations.

SEC. 207. That the amount of the family allowance to members of Class B shall be subject to each of the following limitations:

(a) If an allowance is paid to one or more beneficiaries of Class A, the total allowance to be paid to the beneficiaries of Class B shall not exceed the difference between the allowance paid to the beneficiaries of Class A and the sum of $50.

(b) The total monthly allowance to beneficiaries of Class B added to the enlisted man's monthly allotment to them shall not exceed the average sum habitually contributed by him to their support monthly during the period of dependency but not exceeding a year immediately preceding his enlistment or the enactment of this amendatory Act.

SEC. 208. That as between the members of Class A and as between the members of

Class B, the amount of the allotment and family allowance shall be apportioned as may be prescribed by regulations.

SEC. 209. The War and Navy Departments, respectively, shall pay over to the Treasury Department monthly the entire amount of such allotments for distribution to the beneficiaries, and the allotments and family allowances shall be paid by the bureau to or for the beneficiaries.

SEC. 210. That upon receipt of any application for family allowance the commissioner shall make all proper investigations and shall make an award, on the basis of which award the amount of the allotments to be made by the man shall be certified to the War Department or Navy Department, as may be proper. Whenever the commissioner shall have reason to believe that an allowance has been improperly made or that the conditions have changed, he shall investigate or reinvestigate and may modify the award. The amount of each monthly allotment and allowance shall be determined according to the conditions then existing.

ARTICLE III. COMPENSATION FOR DEATH OR DISABILITY

SEC. 300. That for death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or enlisted man or by any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) when employed in the active service under the War Department or Navy Department, the United States shall pay compensation as hereinafter provided; but no compensation shall be paid if the injury or disease has been caused by his own willful misconduct.

SEC. 301. That if death results from injury—

If the deceased leaves a widow or child, or if he leaves a widowed mother dependent upon him for support, the monthly compensation shall be the following amounts:

(a) For a widow alone, $25.

(b) For a widow and one child, $35.

(c) For a widow and two children, $47.50, with $5 for each additional child up to two.

(d) If there be no widow, then for one child, $20.

(e) For two children, $30.

(f) For three children, $40, with $5 for each additional child up to two.

(g) For a widowed mother, $20. The amount payable under this subdivision shall not be greater than a sum which, when added to the total amount payable to the widow and children, does not exceed $75. This compensation shall be payable for the death of but one child, and no compensation for the death of a child shall be payable if such widowed mother is in receipt of compensation under the provisions of this article for the death of her husband. Such compensation shall be payable whether her widowhood arises before or after the death of the person and whenever her condition is such that if the person were living the widowed mother would have been dependent upon him for support.

If the death occur before discharge or resignation from service, the United States shall pay for burial expenses and the return of body to his home a sum not to exceed $100, as may be fixed by regulations.

The payment of compensation to a widow or widowed mother shall continue until her death or remarriage.

The payment of compensation to or for a child shall continue until such child reaches the age of eighteen years or marries, or if such child be incapable, because of insanity, idiocy, or being otherwise permanently helpless, then during such incapacity.

Whenever the compensation payable to or for the benefit of any person under the provisions of this section is terminated by the happening of the contingency upon which it is limited, the compensation thereafter for the remaining beneficiary or beneficiaries, if any, shall be the amount which would have been payable to them if they had been the sole original beneficiaries.

As between the widow and the children not in her custody, and as between children, the amount of the compensation shall be apportioned as may be prescribed by regulations. The word "widow" as used in this section shall not include one who shall have married the deceased later than ten years after the time of injury.

SEC. 302. That if disability results from the injury—

(1) If and while the disability is total, the monthly compensation shall be the following amounts:

(a) If he has neither wife nor child living, $30.

(b) If he has a wife but no child living, $45.

(c) If he has a wife and one child living, $55.

(d) If he has a wife and two children living, $65.

(e) If he has a wife and three or more children living, $75.

(f) If he has no wife but one child living, $40, with $10 for each additional child up to two.

(g) If he has a widowed mother dependent on him for support, then, in addition to the above amounts, $10.

To an injured person who is totally disabled and in addition so helpless as to be in constant need of a nurse or attendant, such additional sum shall be paid, but not exceeding $20 per month, as the director may deem reasonable: *Provided, however,* That for the loss of both feet or both hands or both eyes, or for becoming totally blind or helplessly and permanently bedridden from causes occurring in the line of duty in the service of the United States, the rate of compensation shall be $100 per month: *Provided further,* That no allowance shall be made for nurse or attendant.

(2) If and while the disability is partial, the monthly compensation shall be a percentage of the compensation that would be payable for his total disability, equal to the degree of the reduction in earning capacity resulting from the disability, but no compensation shall be payable for a reduction in earning capacity rated at less than ten per centum.

A schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries of a permanent nature shall be adopted and applied by the bureau. Ratings may be as high as one hundred per centum. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations and not upon the impairment in earning capacity in each individual case, so that

there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of a permanent injury. The bureau shall from time to time readjust this schedule of ratings in accordance with actual experience.

(3) In addition to the compensation above provided, the injured person shall be furnished by the United States, such reasonable governmental medical, surgical, and hospital services and with such supplies, including artificial limbs, trusses, and similar appliances, as the director may determine to be useful and reasonably necessary: *Provided,* That nothing in this Act shall be construed to affect the necessary military control over any member of the military or naval establishments before he shall have been discharged from the military or naval service.

(4) The amount of each monthly payment shall be determined according to the family conditions then existing.

SEC. 303. That every person applying for or in receipt of compensation for disability under the provisions of this article shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the director. He may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations he shall, in the discretion of the director, be paid his reasonable traveling and other expenses and also loss of wages incurred in order to submit to such examination. If he refuses to submit himself for, or in any way obstructs, any examination, his right to claim compensation under this arti-

cle shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and no compensation shall be payable for the intervening period.

Every person in receipt of compensation for disability shall submit to any reasonable medical or surgical treatment furnished by the bureau whenever requested by the bureau; and the consequences of unreasonable refusal to submit to any such treatment shall not be deemed to result from the injury compensated for.

SEC. 304. That in cases of dismemberment, of injuries to sight or hearing, and of other injuries commonly causing permanent disability, the injured person shall follow such course or courses of rehabilitation, reeducation, and vocational training as the United States may provide or procure to be provided. Should such course prevent the injured person from following a substantially gainful occupation while taking same, a form of enlistment may be required which shall bring the injured person into the military or naval service. Such enlistment shall entitle the person to full pay as during the last month of his active service, and his family to family allowances and allotment as hereinbefore provided, in lieu of all other compensation for the time being.

In case of his willful failure properly to follow such course or so to enlist, payment of compensation shall be suspended until such willful failure ceases and no compensation shall be payable for the intervening period.

SEC. 305. That upon its own motion or upon application the bureau may at any time review an award, and, in accordance with the facts found upon such review, may

Statement.

In suit instituted in the United States District Court for the Eastern District of North Carolina, pursuant to the provisions of Section 19, World War Veterans' Act, 1924 as amended [1] for death insurance benefits by Ben B. Jackson, a minor, against the United States, in which it was claimed that he was the son of the deceased soldier, Jake Jackson (R. 1), the United States, in its answer (R. 3-4) admitted that Jake Jackson was drafted in the United States Army on April 27, 1918, and died May 11, 1918, without having applied for war risk insurance. It is provided, that under these circumstances, the insured soldier shall be deemed to have applied for and to have been granted insurance payable at his death in monthly installments of $25.00 each for a period of 240 months.[2] The jury

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[1] Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, provides: "Sec. 19. In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. • • • Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities."

[2] Section 401 of the War Risk Insurance Act as amended December 24, 1919, c. 16, 41 Stat. 371, 374-375, provides in part: "Any person in the active service on or after the 6th day of April 1917, and before the 11th day of November 1918, who, while in such service, and before the expiration of one hundred and twenty days after October 15, 1917, or one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; and any person inducted into the service by a local draft board after the 6th day of April 1917 and before the 11th day of November 1918, who, while in such service, and before being accepted and enrolled for active military or naval service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be

found for the plaintiff (R. 5). The Circuit Court of Appeals affirmed (R. 64).

Question Presented.

This Court granted certiorari upon the single question of whether Section 401 of the Act of December 24, 1919 [2] was repealed by Section 17 of the Economy Act of March 20, 1933 [3] (R. 66).

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deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments, or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; or if there is no widow surviving him, then to his child or children; or if there is no child surviving him, then to his mother; or if there be no mother surviving him, then to his father, if and while they survive him: Provided, however, that no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations." * * *

[3] Sec. 17 of the Act of March 20, 1933, c. 3, 48 Stat. 8, 11; known as the Economy Act, provides in part: "All public laws granting medical or hospital treatment, domiciliary care, compensation, and other allowances, pension, disability allowance, or retirement pay to veterans and the dependents of veterans of * * * the World War * * * are hereby repealed, and all laws granting or pertaining to yearly renewable term insurance are hereby repealed, but payments in accordance with such laws shall continue to the last day of the third calendar month following the month during which this Act is enacted. The Administrator of Veterans' Affairs under the general direction of the President shall immediately cause to be reviewed all allowed claims under the above referred to laws, and where a person is found entitled under this Act, authorize payment or allowance of benefits in accordance with the provisions of this Act commencing with the first day of the fourth calendar month following the month during which this Act is enacted, and notwithstanding the provisions of Section 9 of this Act, no further claim in such cases shall be required: *Provided,* That nothing contained in this section shall interfere with payments heretofore made or hereafter to be made under contracts of yearly renewable term insurance which have matured prior to the date of enactment of this Act and under which payments have been commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending. * * *"

Summary of Argument.

I.

THE RIGHT TO "AUTOMATIC INSURANCE" BENEFITS WAS FOUNDED UPON CONTRACT.

(a). *It was clearly the intention of Congress to place automatic insurance in the same category as insurance for which application was made.*

(b). *The government departments charged with the responsibility of administering this law have held that it was obvious that Congress intended persons receiving automatic insurance benefits to be treated as if they had contracts of insurance.*

(c). *The courts have held that automatic insurance is a contract within the language of the statute permitting suits of this character to be brought in the Federal Courts.*

II.

CONGRESS DID NOT RESCIND THE RIGHT TO AUTOMATIC INSURANCE BENEFITS IF ITS ATTEMPT TO RESCIND THE RIGHT TO YEARLY RENEWABLE TERM INSURANCE WAS VOID AND BEYOND ITS POWERS, AS REPEAL BY IMPLICATION IS NOT FAVORED.

III.

THE DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS IN THE CASE OF STEPHENS V. UNITED STATES, 85 F. (2d) 570 WAS NOT GROUNDED UPON THE PROPOSITION THAT AUTOMATIC INSURANCE WAS REPEALED BUT THE REMARKS OF THE COURT IN THAT RESPECT WERE MERE DICTUM.

ARGUMENT.

I.

The right to "Automatic Insurance" benefits was founded upon contract.

(a). *It was clearly the intention of Congress to place automatic insurance in the same category as insurance for which application was made.*

The purpose behind the right to automatic insurance was to afford protection to all those in the active service prior to the publication of the terms of the actual contract of insurance who, of necessity, had not had the opportunity to apply for insurance, as well as to persons who became disabled or died within a limited period after such publication without having applied for insurance. That purpose is well expressed in the statements of Secretary of the Treasury McAdoo, who was largely responsible for the preparation of this bill before the House Committee of Interstate and Foreign Commerce at the hearings on H. R. 5723, which later became the War Risk Insurance Act.[4]

The statements relative to the automatic insurance provisions in the reports of the committee in submitting the bill

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[4] In the report of the hearings on H. R. 5723 appears the following colloquy (part 2, pp. 36-37):

Mr. Sims: * * * Why should not this bill be amended so as to take effect at a time so early that if the bill should not pass in that time it should be retroactive to that date, so as to cover the case of soldiers who are already in the service and who will be in the service before this bill is approved?

Secretary McAdoo: I think we cover that by a provision of the bill * * *.

Mr. Chairman: I do not see how you can make the insurance provision retroactive.

Secretary McAdoo: We have done something similar to that, because we have provided that in case of death which occurs before this bill is passed and before the man can have the opportunity, it would be presumed that he took a certain amount of insurance, and the Government will take care of that.

to the House of Representatives show that the purpose of said provisions, as expressed by Secretary McAdoo, was understood and accepted by Congress.[5]

Section 401 of the War Risk Insurance Act as amended December 24, 1919, c. 16, 41 Stat. 371, 374-375 provides in part:

> "Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who while in such service and before * * * 120 days after entrance into or employment in the active service * * * dies or has died without having applied for insurance *shall be deemed* to have applied for and to have been granted insurance * * *."

The word "insurance" is there used in its sense of "contract of insurance," and the words, "shall be deemed" are the equivalent of "shall be conclusively presumed." The literal meaning of the whole provision, therefore, is that each person coming within its terms shall be conclusively presumed to have applied for and to have been granted a *contract of insurance.*

(b). *The government departments charged with the responsibility of administering this law have held that it was*

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[5] It was stated in the first report of said Committee (H. R. Report No. 130, 65th Cong., 1st Sess., part 1, p. 2):

Another valuable feature of the bill is that if during the first 120 days after the enlistment the soldier should fail to take insurance, and die, he will be considered as insured and the benefits of such insurance will go to his family.

The minority report on the same bill contains a similar statement (H. R. Report 130, part 2, p. 7); and the supplemental report of said House Committee (H. R. Report 130, part 3, p. 12) states:

SECTION 301. Must be applied for within 120 days after promulgation of terms or subsequent entry into service. Any person in active service on or after April 6, 1917, who is totally disabled or dies before expiration of the 120 days is deemed insured for life in monthly installments of $25, and if he dies before receiving 240 such installments, balance payable monthly to, but only if and while there survive him, widow, child or widowed mother.

obvious that Congress intended the person receiving automatic insurance benefits to be treated as if they had contracts of insurance.

In the case of *Jacob Crvik* v. *United States,* a case in which judgment had been obtained for the payment of automatic insurance benefits by a District Court in 1928, Honorable William D. Mitchell, then Solicitor General of the United States, when the question of authorizing an appeal was before him for consideration was of the opinion that it was obvious that Congress intended those persons receiving automatic insurance benefits to be in all respects like those who had applied for insurance, and was of the opinion that they should be treated as if they had insurance contracts.[6]

The Administrator of Veterans' Affairs has paid and is now paying monthly installments in over 7,000 automatic

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[6] OFFICE OF THE SOLICITOR GENERAL

17-82.30 WASHINGTON, D. C. November 1, 1937.

MEMORANDUM FOR MR. FARNUM.

In re: Jacob Crvik v. United States.

My first intention was to authorize an appeal on the jurisdictional question, but on going further into the file and giving further thought to the case I am satisfied no appeal should be taken. Whether jurisdiction exists depends on the intention of Congress. It is perfectly obvious that Congress intended those getting "automatic" insurance to be in all respects like those who applied. They are to be treated as if they had contracts. There can be no possible reason why Congress could have intended to deny such persons relief in the courts.

If by any possibility we should succeed in the litigation, we could only expect remedial legislation to overturn the result and nothing would be gained.

The test I apply in a case like this is whether we could support in the Supreme Court a decision of the Circuit Court of Appeals in our favor. I am satisfied we could not. I think the case is hopeless and we will only be unduly harassing claimants and wasting time and money to go on with it.

The United States Attorneys should be instructed in all these cases not to claim want of jurisdiction.

WILLIAM D. MITCHELL,
Solicitor General.

insurance cases in which the right vested and accrued, as did the right of this minor plaintiff, some nineteen years ago.[7] The position of government counsel here is not only inconsistent with the practice established by the Department of Justice almost ten years ago, but is also at variance with the conduct of the Administrator of Veterans' Affairs in continuing the payment of such claims.

In *United States* v. *The Alabama Great Southern Railroad Company*, 142 U. S. 615, the controversy involved the proper construction of a statute relating to concession in the price for transporting mails where the carrier had received land grants from the Government. The Post Office Department had construed the statute in a certain manner, which construction was followed from 1876 to 1885 by three Postmasters General. Then a new Postmaster General sought to change the construction and this Court denied his right so to do and held in favor of the carrier. In the course of the opinion (page 621) this Court said:

> "We think the contemporaneous construction thus given by the executive department of the Government, and continued for nine years through six different administrations of that Department; a construction which, though inconsistent with the literalism of the Act, certainly consorts with the equities of the case, should be considered as decisive in this suit. It is a settled doctrine of this Court that in case of ambiguity, the judicial department will lean in favor of a construction given to

[7] The Annual Report of the Administrator of Veterans' Affairs for the year 1936 stated (at page 28) "Payments of automatic insurance (provided for those who were permanently and totally disabled or who died within 120 days after entrance into service and before making application for term insurance) are being made to 305 permanently and totally disabled veterans, of whom 201, or 65.90 per cent are suffering from neuropsychiatric diseases; 60 or 19.67 per cent from tuberculosis; and 44, or 14.43 per cent, from general medical and surgical conditions. In the cases of 6,861 deceased veterans, this insurance is being paid to their beneficiaries, classified as follows: 5,775 parents, 580 widows and 506 children."

a statute by the department charged with the execution of such statute, and, if such construction be acted upon for a number of years, will look with disfavor upon any sudden change, whereby parties who have contracted with the government upon the faith of such construction may be prejudiced."

Had the Administrative Officer who was charged with the responsibility of administering this law felt that this law repealed the right to pay these claims after the date of its enactment, to wit, March 20, 1933, he certainly would have ceased payments in such cases. By not discontinuing these payments, he has treated these automatic insurance claims the same as claims under contracts of yearly renewable term insurance which matured prior to date of enactment of the Economy Act.

From letter of the Administrator of Veterans' Affairs appearing on pages 80 to 85 inclusive of government counsel's brief (Appendix) it is evident that this public officer charged with the duty of administering the laws pertaining to insurance;

1. Has been paying benefits of automatic insurance on new claims filed after the enactment of the Economy Act.

2. Has issued a regulation giving benefits of "automatic insurance" the same status as benefits of those having contracts of war risk term insurance, and has promulgated the same rules with regard to the payment of benefits of the so-called "automatic insurance" as he did with respect to the war risk term insurance contracts.

3. He considered later amendatory legislation[8] to the so-called "Economy Act" as applicable to so-called "automatic

[8] Public No. 78, 73rd Congress provides: "Notwithstanding the provisions of Section 17, Title I, Public Numbered 2, Seventy-third Congress, any claim for yearly renewable term insurance on which premiums were paid to the date of death of the insured and any claim for pension, compensation allowance, or emergency officers' retirement pay under the

insurance'' as well as war risk term contracts of insurance, even though such legislation did not specifically mention automatic insurance.

4. He added ''including automatic insurance'' to his regulations respecting term insurance.[9]

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provisions of laws repealed by said Section 17 wherein claim was duly filed prior to March 20, 1933, may be adjudicated by the Veterans' Administration on the proofs and evidence received by the Veterans' Administration prior to March 20, 1933 and any person found entitled to the benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws."

Public No. 141, 73rd Congress provides: "Sec. 35. That notwithstanding the provisions of Section 17 of Title I of an Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, and Section 20 of an Act entitled "An Act making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes," approved June 16, 1933, any claim for yearly renewable term insurance under the provisions of laws repealed by said Section 17, wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration, and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws."

[9] Veterans' Regulation No. 8, promulgated March 31, 1933, pursuant to the Economy Act, provides in part:

III. Payments under contracts of yearly renewable term insurance (including automatic insurance) which have matured, and under which payments have been commenced prior to March 20, 1933, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance (including automatic insurance), or which may hereafter be rendered in any such suit pending in court on March 20, 1933, may hereafter be made.

IV. Further payment of benefits on account of the death of an insured to whom yearly renewable term insurance (including automatic insurance) benefits have been awarded and are being paid in accordance with paragraph III of this regulation shall be made in accordance with the World War Veterans' Act 1924 as amended, and precedents in effect thereunder.

V. Except as stated above, no payments may hereafter be made under contracts of yearly renewable term insurance (including automatic in-

5. He approved opinions of his Solicitor which recognized that:

(a) "Automatic insurance" came within the phrase "yearly renewable term insurance" insofar as the repealing provisions of Section 17 of Public No. 2 is concerned; and

(b) Automatic insurance is a contract of yearly renewable term insurance within the meaning of the so-called "saving clause" of Section 17 of the Economy Act; and

(c) Automatic insurance shall be considered as a contrast of insurance within the meaning of Section 19 of the World War Veterans' Act, 1924, as amended[10] and

(d) Automatic insurance is embraced by Section 20 of Public No. 78 concerning:

> "any claim for yearly renewable term insurance on which premiums were paid to the date of death of the insured."

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surance) and all pending claims or claims hereafter filed for such benefits shall be disallowed.

Veterans' Regulation 8a promulgated June 30, 1934, cancelled Veterans' Regulation 8.

EXECUTIVE ORDER

VETERANS' REGULATION NO. 8a

Executive Order No. 6096 dated March 31, 1933 (Veterans' Regulation No. 8), is hereby cancelled as of the date thereof.

FRANKLIN D. ROOSEVELT.

The White House, June 30, 1934.

No. 6776.

[10] Section 19 of the World War Veterans Act 1924, as amended, July 3, 1931 (Public 522, 71st Congress, Sec. 445, Title 38 U. S. C. A. (Supp.) provides:

In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Bureau and any person or persons claiming thereunder, an action on the claim may be brought against the United States, either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the District in which such persons or any one of them, resides."

(e) Automatic insurance is embraced by the language of Section 35, Public 141, 73rd Congress[11] pertaining to "any claim for yearly renewable term insurance."

(f) Veterans' Regulation No. 8 [12] bracketed automatic insurance with yearly renewable term insurance with respect to the rights of claimants to benefits.

This contemporaneous construction of this Act given by the Executive Department of the Government charged with the responsibility of its administration, continued since March 20, 1933 (the effective date of the Economy Act), certainly consorts with the equities involved, is entitled to great respect and should be given weight. *United States* v. *The Alabama Great Southern Railroad Co.*, 142 U. S. 615; *National Lead Co.* v. *United States*, 252 U. S. 140.

(c) *The Courts have held that automatic insurance is a contract within the language of the statute permitting suits of this character to be brought in the Federal Courts.*

The only authorization by Congress of suits on claims for insurance benefits such as is the subject of this litigation, is

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[11] Public No. 141, 73rd Congress, provides:

"Sec. 35. That notwithstanding the provisions of Section 17 of title I of an Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, and Section 20 of an Act entitled "An Act making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions and offices, for the fiscal year ending June 30, 1934 and for other purposes," approved June 16, 1933, any claim for yearly renewable term insurance under the provisions of laws repealed by said Section 17, wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration, and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws * * *."

[12] See footnote 9.

found in Section 19 of the World War Veterans' Act 1924, as amended, and refers to a disagreement as to a claim under a contract of insurance.[13]

In the case of *United States* v. *Carlson* (C. C. A. 9) 44 F. (2d) 5 the Court said:

> "Now what were Appellee's rights under the repealed statute? The answer is not difficult. He is deemed to have applied for and to have been granted a contract or policy of insurance as provided in that statute. In other words, he is to be regarded and dealt with as though he were an actual policy holder under that act. It necessarily follows, therefore, that his rights are precisely the same as those possessed by a soldier who, after the enactment of the War Risk Insurance Act, applied for and received a policy of insurance."
>
> "The obvious purpose of this section was to award insurance retroactively and automatically to all persons totally and permanently disabled during the time specified while in the active service of the government during the World War, but prior to the enactment of the War Risk Insurance Act. If appellee was a member of that class of soldiers, he is entitled to the benefits conferred by the act, precisely as he would have been had he been a holder of a policy of war risk insurance subsequent to the passage of the War Risk Insurance Act. After the passage of that act the soldier was required to apply for insurance in order to entitle himself to its benefits, but by the terms of the section quoted, a soldier in the active service of the government on or after April 6, 1917, if totally and permanently disabled, is deemed to have been granted insurance; that is to say, is to be treated and dealt with precisely as though he in fact held a policy of war risk insurance made available by the act. With this single difference it would seem that both classes of soldiers stand on an equal footing in respect of insurance."

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[13] See footnote 10.

In the case of *Cunningham* v. *United States,* 67 F. (2d) 714 (C. C. A. 5) the Court held:

> "The first (contention) is untenable on its face. It is true that the grant is a gratuity in the sense that no premium is exacted of the soldier whose case it fits; but this is the only sense in which it is true. What is granted is a contract of insurance, having in all other respects than the requirement of premiums the same incidents, entitling the holder to the same rights and remedies, and governed by the same rules as contracts of insurance issued on applications and with the payment of premiums. The place where the language is found, the fact that it is an integral part of the act granting war risk insurance, the language itself, "any person * * * shall be deemed to have applied for and to have been granted insurance" under the plainest principles of statutory construction compels this conclusion. Any other would do the greatest violence to the act. Indeed, the matter is so plain that the suability of these contracts have been assumed without question. United States *v.* Carlson, 44 F. (2d) 5; Caprio *v.* United States, 45 F. (2d) 520, 521."

In the case of *U. S.* v. *Howard Preece* (C. C. A. 10) 85 F. (2d) 952, that court, in construing the provisions of Section 401 of the War Risk Insurance Act, as amended, after quoting the provisions of said section, said:

> "* * * The act plainly made an automatic award of insurance, and a person who became totally and permanently disabled while in the active military service between April 6th and the date on which the statute became effective is clearly within its terms. Plaintiff invokes its provisions and we shall assume, without deciding, that it has not been repealed, but is still in effect."

The view that claims for automatic insurance are actionable is supported by the weight of judicial precedent and

decision. In several of the reported cases involving automatic insurance it appears to have been assumed, without question, by the attorneys for the Government and the courts, that claims for such insurance were actionable. *Anderson* v. *United States* (C. C. A. 9), 36 F. (2d) 45; *United States* v. *Carlson* (C. C. A. 9) 44 F. (2d) 5; *Caprio* v. *United States* (C. C. A. 1), 45 F. (2d) 520; *Kerr* v. *United States* (C. C. A. 9) 61 F. (2d) 800.

By the Act of May 20, 1918, Section 405 of the War Risk Insurance Act was repealed and Section 13 thereof was amended to include the provisions relative to suits formerly in Section 405. (40 Stat. 555, 556.) Section 13, as so amended, provides:

> "Sec. 13. * * * that in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides, * * *."

This act was amended on different occasions, the last amendment being dated July 3, 1930 (45 Stat. 1015, 38 U. S. C. A., Section 445) reads as follows:

> "Section 19. In the event of disagreement as to claim including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia, or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
>
> * * * Infants, insane persons, or persons under other legal disability, or persons rated as incompetent, or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities. * * *"

In order for suit to be possible for automatic insurance benefits it must be brought under the above quoted provision of law as there is no other provision of law for suing the government on these insurance contracts. From the enactment of the law creating automatic insurance in 1918 until 1936 (18 years) there was no intimation contrary to the accepted belief that this insurance was a contract of insurance. Now, because of certain dictum appearing in the decisions of the Court in the case of *Stephens* v. *United States*, 85 F. (2d) 520, we find the Administrator of Veterans' Affairs suspending the awarding of new claims for automatic insurance benefits, but continuing the payment of claims already filed.

In the case of *Hahn* v. *United States*, 107 U. S. 402, the appellant sought to recover a share in certain fines and forfeitures accruing at the Port of New York, and his right thereto turned primarily upon the proper construction of a statute enacted in 1867. Under the construction thereof which had been adopted and followed by the Treasury Department, he was not entitled to participate in such fines, etc. This Court approved the reasoning and conclusions of the Court of Claims which emphasized the fact that Congress had not interfered with such constructions by the Secretary of the Treasury while the Act was in force.

This was in accord with the case of *United States* v. *Pugh*, 99 U. S. 265, wherein this Court in the course of opinion observed:

> "In the case of a doubtful and ambiguous law, the contemporaneous construction of those who have been called upon to carry it into effect, is entitled to great respect."

In *United States* v. *The Alabama Great Southern Railroad Company*, 142 U. S. 615, the controversy involved the proper construction of a statute relating to concession in the price of transporting mails where the carrier had received land

grants from the Government. The Post Office Department had construed the statute in a certain manner, which construction was followed from 1876 to 1885 by three Postmasters General. Then a new Postmaster General sought to change the construction and this Court denied his right so to do and held in favor of the carrier. In the course of the opinion (page 621) this Court said:

> "We think the contemporaneous construction thus given by the executive department of the government, and continued for nine years through six different administrations of that Department; a construction which, though inconsistent with the literalism of the Act, certainly consorts with the equities of the case, should be considered as decisive in this suit. It is a settled doctrine of this Court that in case of ambiguity, the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and, if such construction be ACTED UPON FOR A NUMBER OF YEARS, will look with disfavor upon any sudden change, whereby parties who have contracted with the government upon the faith of such construction may be prejudiced. * * *"

That portion of the law giving the right to sue for insurance benefits has been amended time and again with the opinions of Circuit Courts of Appeals being unanimously to the effect that it gave the right to sue for automatic insurance as well as war risk term insurance contracts.

In *New York, New Haven and Hartford Railroad Company*, v. *Interstate Commerce Commission*, 200 U. S. 361 (at 401), this Court clearly indicated that notwithstanding the fact that it might disagree with the construction of the statute in certain particulars, nevertheless, since the ruling had been made by such Commission during "the many years which have followed those decisions, we concede that the interpretation given by the Commission in those cases to the 'Act to Regulate Commerce' is now binding, and, as re-

stricted to the precise conditions which were passed on in the cases referred to, must be applied to all strictly identical cases in the future; * * * We make this concession because we think we are constrained to so do, in consequence of the familiar rule that a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, AND HAS BEEN IMPLIEDLY SANCTIONED BY THE RE-ENACTMENT OF THE STATUTE WITHOUT ALTERATION IN THE PARTICULARS CONSTRUED, when not plainly erroneous, must be treated as read into the statute'' (page 402).

Since it was—

1. The intention of Congress to place automatic insurance in the same category as insurance for which application was made, and
2. It was the administrative practice of the government officials charged with the responsibility of administering this law to consider automatic insurance benefits exactly as term insurance benefits, and
3. The courts have considered such actions as being authorized by the same law that permits suits against the United States on contracts of insurance,

it therefore follows that this minor's right to insurance benefits was founded upon contract.

Therefore, under the decision of this Court in the cases of *Lynch and Wilner* v. *United States,* 292 U. S. 571, 78 L. Ed. 1434, the right to this insurance is protected by the due process clause of the Fifth Amendment, and was not repealed by Congress.

II.

Congress did not rescind the right to automatic insurance benefits if its attempt to rescind the right to yearly renewable term insurance was void and beyond its power, as repeal by implication is not favored.

The repealing clause of Public No. 2, 73rd Congress upon which the United States relies as far as is pertinent is as follows:

> "Sec. 17. All public laws granting medical or hospital treatment, domiciliary care, compensation and other allowances, pensions, disability allowance or retirement pay to veterans * * * are hereby repealed and all laws granting or pertaining to yearly renewable term insurance are hereby repealed."

If the right to automatic insurance was repealed, then there must be a repeal by implication because there is no language of the repealing clause which refers specifically to automatic insurance. Repeals by implication are not favored by the Courts. The rule is that there can only be a repeal by implication when a new act is a substitute in its entirety for the old law.

U. S. v. *Noce*, 268 U. S. 613, 69 L. Ed. 1116;
U. S. v. *Greathouse*, 166 U. S. 601, 41 L. Ed. 1130;
U. S. v. *Yuginovich*, 256 U. S. 450, 65 L. Ed. 1043.

Public No. 2, 73rd Congress was not a substitute for the World War Veterans' Act in its entirety. It in no manner disturbs the rights of persons who had previously been awarded automatic insurance. It did not repeal the statute authorizing the issuance of government life insurance, nor did it repeal the provisions of the World War Veterans' Act relative to penalties. It did not take away the right under Section 19 of the World War Veterans' Act to bring

suits on converted government insurance. It in no way repealed the rights and liabilities existing under awards made under yearly renewable term insurance granted by the Government. It was not a substitute for but in effect an amendment of the World War Veterans' Act. Its repealing clause only repealed those provisions of the World War Veterans' Act which were specifically mentioned.

It has been held by the Fifth Circuit Court of Appeals that the repealing clause of Section 17, *supra* did not repeal Section 500 of the World War Veterans' Act fixing and limiting fees for the prosecution of claims before the Veterans' Administration.

In the case of *Lucas* v. *United States,* 80 F. (2d) 372, one Lucas was indicted and convicted of receiving and retaining a fee as an attorney in a war risk insurance suit greater than that permitted by Section 500 of the World War Veterans' Act. It was the contention of Lucas that the penal provisions of Section 500 of the World War Veterans' Act on which the indictment rested were repealed by Section 17 of the Act of March 20, 1933, *supra.* Lucas contended that it was a repeal by implication. The Court said:

> "* * * The clause repealing all laws granting or pertaining to yearly renewable term insurance was held unconstitutional as to existing contracts in *Lynch* v. *United States,* 292 U. S. 571, 54 S. Ct. 840, 78 L. ed. 1434. The contention is that the clause nevertheless is operative to repeal the penal provision of Section 500 as a law pertaining to such insurance, there being no constitutional hindrance to the mere repeal of a penal statute, and that the quoted proviso did not as to existing judgments or as to pending suits retain the penal provision but only preserved intact the payments to be made. The contention cannot prevail. The repeal of the criminal provision, if intended at all, was not by a separate clause independent of other repeals, but only as a part of the plan to repeal all laws pertaining to yearly renewable

term insurance. If that plan fails by reason of unconstitutionality, its failure is total; for there can be no certainty, and there is no probability that Congress would have repealed some of the laws on the subject independently of the repeal of others. The repealing clause under discussion must be held indivisible and to fail in its entirety. See *Lynch* v. *United States, supra; Allen* v. *Louisiana*, 103 U. S. (13 Otto) 80, 26 L. ed. 318; *Field* v. *Clark*, 143 U. S. 649, 12 S. Ct. 495, 36 L. ed. 294; *United States* v. *Ju Toy*, 198 U. S. 253, 25 S. Ct. 644, 49 L. ed. 1040; *Commissioner of Internal Revenue* v. *Wilson* (C. C. A.) 76 F. (2d) 766. * * *" (This Court denied certiorari in the Lucas case 297 U. S. 709, 80 L. ed. 996).

The same question arose in the case of *Smith* v. *United States*, 83 F. (2d) 632 (8th C. C. A.). Smith was convicted of charging and receiving an excessive attorney's fee for assisting a World War veteran in the preparation and execution of the necessary papers in the presentation to the Veterans' Administration of a claim for disability compensation. He contended that Section 17, *supra*, had repealed the penal provisions of Section 500 of the World War Veterans' Act. The Court said:

"* * * Section 500 of the World War Veterans' Act, as amended (38 U. S. C. A. Sec. 551) was not expressly repealed by said Section 17, but appellant contends that it was repealed by implication. Such repeals are not favored, and will not be held to exist if there be any other reasonable construction. *Ex parte Webb*, 255 U. S. 663, 32 S. Ct. 769, 56 L. ed. 1248; *Cope* v. *Cope*, 137 U. S. 682, 11 S. Ct. 222, 34 L. ed. 832.

Section 17 of Title I of the Economy Act made provision for pension to certain classes of persons who served in the active military or naval service during the World War, and who are permanently disabled as a result of disease or injury incurred in line of duty in such service. 38 U. S. C. A. Par. 701 and 702. It is pointed out that Section 500 (38 U. S. C. A. Sec. 551) was not re-

enacted in the Economy Act of March 20, 1933 (48 Stat. 8). This would indicate that Congress considered it not repealed, but still in full force and effect. * * *"

In the criminal cases of *Lucas and Smith, supra,* the Criminal Division of the Department of Justice asserted that there was no repeal by implication of Section 500 of the World War Veterans' Act, by the language used in Section 17, *supra.* Thus, we have the unusual situation of the same Department of Justice by its civil division now urging the Court to find that there is a repeal by implication of automatic insurance rights arising, if at all, from the same section of law. The language above quoted from the opinion in the *Lucas* case, *supra,* is particularly pertinent. The repeal of the criminal provision, if intended at all, was not by a separate clause independent of other repeals but only as a part of the plan to repeal all laws pertaining to yearly renewable term insurance. If that plan failed by reason of unconstitutionality, its failure is total for there can be no certainty and there is no probability that Congress would repeal some of the laws on the subject independently of the repeal of others. The repealing clause under discussion must be held indivisible and to fail in its entirety.

No one can say that Congress would intend to repeal automatic insurance rights if the repealing clause relative to yearly renewable term insurance was held unconstitutional.

In the case of *Lynch and Wilner* v. *United States,* 78 L. ed. 1484, 292 U. S. 571, Justice Brandeis speaking for the Supreme Court of the United States stated:

"But while the statutes granting gratuities contain no specific provision for suits against the United States, Congress as if to emphasize the contractual obligation assumed by the United States when issuing war risk policies conferred upon beneficiaries substantially the same legal remedy which beneficiaries enjoy under policies issued by private corporations. The consent to sue

has been given originally by Section 405 of the Act of 1917, which, like its substituted Sections applied to *all kinds of insurance* making no specific reference to yearly renewable term policies, obviously Congress did not intend to repeal generally the Section providing for suits." (*italics supplied*)

The Court thereupon concluded that as Section 17 attempted to repeal rights acquired under yearly renewable term insurance it was unconstitutional.

This plaintiff's rights were clearly not repealed by Section 17, *supra*. Under the repealing clause above quoted, which is the only one on which the government can rely, the word "allowance" appears to be the only word which in any manner could be contended to include automatic insurance. We do not think that anyone can successfully contend that "allowances" under the War Risk Insurance Act or the World War Veterans' Act covers automatic insurance.

The War Risk Insurance Act, Public No. 90, 65th Congress, approved October 6, 1917, was divided into articles, Article II referred solely to allotments and family allowances, Article III referred solely to compensation for death and disability and Article IV referred solely to insurance. Automatic insurance is placed under Article IV of the original War Risk Insurance Act which Article referred solely to insurance. There was a definite meaning for "allowance" under the terms of the original War Risk Insurance Act. Article II of this Act specifically related to allotments and family allowances. The allowance made under this Article related to the "allowance" made to a wife or dependent relative while the soldier was in the military service. The War Risk Insurance Act with amendments prior to April 1, 1923, issued by the United States Veterans' Bureau at Washington, D. C., was printed and indexed by the Government Printing Office at Washington. In the index thereof relating to allotment and allowance reference is made only to Section

210 of the War Risk Insurance Act which is embraced in Article II and relates to allotments and family allowances to the enlisted personnel of the War and Navy Departments.

In the index of the World War Veterans' Act of 1924 with amendments prior to June 1, 1929, a pamphlet issued by the United States Veterans' Bureau under the seal of the Bureau and printed by the Government Printing Office at Washington, D. C., in 1929 under "allowance" reference is not made to automatic insurance. The following sections of the World War Veterans' Act, 1924, as amended only are mentioned:

> "Section 23, Section 301, Section 401 (of the World War Veterans' Act, not Section 401 of the War Risk Insurance Act), Section 502, and Section 503."

These allowances cover generally such items as nurse hire for disabled ex-service men or women, emergency medical treatment where the facilities of the Bureau were not available, training pay while the disabled veterans were in vocational training, and travel pay or allowances made to disabled men after rehabilitation and completion of vocational training or pay for their dependents while in training.

On December 31, 1930, the United States Veterans' Bureau caused to be printed in two parts "Regulations and Procedure" under the seal of the Veterans' Bureau and over the signature of the Honorable Frank T. Hines, Director thereof, the regulations and procedure relating to claims in the Veterans' Bureau. No reference is there made to automatic insurance as an "allowance." In the general index of Volume II, page 2327, only the following is indexed under "allowance":

Additional for attendant or nurses . . . . Page 136- 147
Family—Hon. Julian W. Mack, discussion 1241-1273
Maintenance and support — Deductions from, for insurance premiums 198-1981
Procedure, schedules 263-1905-2033 2101-2102-2109-2239 2245
No promise of allowances to be made . . . 1131
Trainees, property 2309-2312-2313

It follows, therefore, that Section 17 contains no language repealing the provisions of Section 401 of the War Risk Insurance Act relating to automatic insurance, even though such a repeal would be constitutional. However, if the language of Section 17 should be held broad enough to cover a repeal of automatic insurance benefits, then such provisions are unconstitutional under the decision of the Supreme Court of the United States in the *Lynch* and *Wilper* cases, *supra,* and under the decisions of this Court of appeals in the *Weaver* case, *supra.* 4th Circuit 86 F (2d) 372.

Furthermore, even if Section 17 of Public No. 2, 73rd Congress repealed automatic insurance benefits Congress could not destroy the right of such benefits which accrued to the respondent covering the period from 1918 down to the time of the repealing clause. *Ettor, et al* v. *City of Tacoma,* 228 U. S. 148, 57 L. ed. 773.

III.

The decision of the Sixth Circuit Court of Appeals in the case of Stephens v. United States, 85 F. (2d) 570, was not grounded upon the proposition that automatic insurance was repealed, but the remarks of the court in that respect were mere dictum.

In the case of *Stephens* v. *United States,* the Sixth Circuit Court of Appeals in a *per curiam* opinion, held:

> "It appearing that this suit was brought by the administrator of the estate of Thomas E. Stephens, who

served in the United States Army from December 18, 1914, to July 25, 1917, to recover automatic insurance for the benefit of his brothers and sisters under Section 401 of the amended War Risk Insurance Act passed October 6, 1917 (40 Stat. 409), as again amended by Section 19 of the Act of June 25, 1918 (40 Stat. 609, 614, 615), but that the statute does not provide for the payment of such automatic insurance benefits to brothers and sisters of a deceased soldier, and it further appearing that such benefits were in the nature of gratuities and that the statute allowing them was repealed by Section 17 of Title 1 of the Act of March 20, 1933, commonly called the Economy Act, ch. 3, 49 Stat. 11, U. S. C. tit. 38, Sec. 717 (38 U. S. C. A. Sec. 717)."

A mere reading of this opinion is sufficient to show that the Court decided the case upon the proposition that the parties plaintiff had no right to these insurance benefits and the last phrase of the opinion was merely dictum as it was not necessary for a decision in that case. It is, therefore, obvious that that Court did not seriously consider the question here involved.

Conclusion.

In view of the foregoing it is respectfully submitted that the action of the Circuit Court of Appeals should be affirmed by this Court.

Respectfully submitted,

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ANDERSON G. ULMER,
A. W. DOWELL,
WARREN E. MILLER,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 199.—October Term, 1937.

The United States of America, Petitioner, *vs.* Ben B. Jackson, by his Guardian *ad litem*, Alphene W. Dowell.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[January 17, 1938.]

Mr. Justice Black delivered the opinion of the Court.

The question is whether the Economy Act[1] repealed Section 401 of the War Risk Insurance Act[2] and thereby deprived veterans and their beneficiaries of "automatic insurance."

In this suit, brought by the son of a soldier who died in service, both the district court[3] and the Court of Appeals[4] were of the opinion that the Economy Act did not terminate the rights of a beneficiary of automatic insurance. We granted certiorari limit-

[1] Sec. 17, Act of March 20, 1933, c. 3, 48 Stat. 11: "All public laws granting medical or hospital treatment, domiciliary care, compensation and *other allowances*, pension, disability allowance, or retirement pay to veterans and the dependents of veterans of . . . the World War, . . . are hereby repealed, and all laws granting or *pertaining to yearly renewable term insurance* are hereby repealed, but payments in accordance with such laws shall continue to the last day of the third calendar month following the month during which this Act is enacted. . . ."

[2] Sec. 401 of the War Risk Insurance Act as amended Dec. 24, 1919, c. 16, 41 Stat. 371, 375: " . . . Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before the expiration of one hundred and twenty days after October 15, 1917, or one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; . . . If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to . . . his child . . . : *Provided, however,* That no more than two hundred and forty of such monthly installments, . . . shall be so paid."

[3] 14 Fed. Supp. 132.

[4] 89 F. (2d) 572.

ing consideration to the question of the repeal of the law providing automatic insurance.[5]

During the World War, it was the policy of the Government to allow soldiers one hundred and twenty days after enlistment or drafting within which to apply for and purchase insurance. For this period, it was intended that they be protected as though they had bought government insurance. In furtherance of this policy, Congress provided that all veterans, who died or became totally and permanently disabled within one hundred and twenty days after their entrance into active service, should be automatically "deemed to have applied for and to have been granted insurance."

It is here contended that the words of the Economy Act repealing "other allowances" and "laws . . . pertaining to yearly renewable term insurance" are broad enough to include a repeal of automatic insurance. With this contention we cannot agree.

Repeals by implication are not favored. A law is not to be construed as impliedly repealing a prior law unless no other reasonable construction can be applied.[6]

While the Economy Act explicitly repealed all laws which granted ". . . medical or hospital treatment, domiciliary care, compensation and other allowances, pension, disability allowance, . . . retirement pay . . . and all laws granting or pertaining to yearly renewable term insurance . . . ," Congress did not include "automatic insurance" in this detailed list of benefits repealed.

The words "other allowances" have a well settled meaning. "Allowances" in veterans' legislation, in the Veterans' Bureau and in Army terminology[7] has never been considered synonymous with, or inclusive of, automatic insurance; this word ordinarily refers to extra and special items (in addition to regular compensation) such as nurse hire, training pay, and "travel pay and allowances."[8]

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[5] — U. S. —.

[6] United States *v.* Yuginovich, 256 U. S. 450; United States *v.* Noce, 268 U. S. 613; see, Cope *v.* Cope, 137 U. S. 682.

[7] See, as to meaning of "allowances", Jones *v.* United States, 60 Court of Claims 552, 567; United States *v.* Landers, 92 U. S. 77.

[8] An illustration of the meaning of "allowances" appears in that Section (17) of the Economy Act which is relied upon as the repeal, to wit.: "That, subject to such regulations as the President may prescribe, *allowances may be granted for burial and funeral expenses and transportation of the bodies (including preparation of the bodies) of deceased veterans of any war to the places of burial thereof in a sum not to exceed $107 in any one case.*"

The words "all laws *granting* or *pertaining* to yearly renewable term insurance" refer only to laws which are enactments upon the subject of yearly renewable term insurance. Section 401 did not grant yearly renewable term insurance nor is it an enactment upon that subject. It provided for those soldiers who died in service before they had an opportunity to purchase yearly renewable term insurance or any other type of insurance. This law, therefore, did not pertain to yearly renewable term insurance but to protection for soldiers who never had and never could obtain yearly renewable term insurance.

It is to be remembered that automatic insurance applied to that particular group of American soldiers who either were killed, died, or became wholly or permanently incapacitated before they had a reasonable opportunity to obtain insurance of any kind. It may be that Congress did not believe it proper to economize at the expense of those veterans who came out of the army with health completely destroyed or to the detriment of the beneficiaries of soldiers who lost their lives in service without a reasonable opportunity to apply for insurance.

Certainly the reason which prompted the passage of the express provisions of Section 401 is such that, in the absence of subsequent legislation equally express, they are not overthrown by mere inference or implication.[9] Only clear and unequivocal language would justify a conclusion that benefits, provided by a grateful government because of death and permanent incapacity of its soldiers, are to be wholly withdrawn for reasons of economy. Special provisions benefiting either soldiers who became incurably helpless in the Army or the dependents of soldiers who died or were killed in the service of their country cannot justifiably be repealed by implication.[10] There is no irreconcilable conflict between Section 401 and the Economy Act and effect can reasonably be given to both.[11] The judgment of the Court of Appeals is therefore

Affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

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[9] Rosencrans *v.* United States, 165 U. S. 257.

[10] Cf. United States *v.* Greathouse, 166 U. S. 601.

[11] Cf. Washington *v.* Miller, 235 U. S. 422, 428; see, also, Posadas *v.* National City Bank, 296 U. S. 503 *et seq.*